

110TH CONGRESS  
1ST SESSION

# S. 2492

To provide for improved oversight of and accountability for military housing privatization initiative projects.

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IN THE SENATE OF THE UNITED STATES

DECEMBER 17, 2007

Mr. PRYOR (for himself, Mr. CHAMBLISS, and Mrs. LINCOLN) introduced the following bill; which was read twice and referred to the Committee on Armed Services

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## A BILL

To provide for improved oversight of and accountability for military housing privatization initiative projects.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Military Housing Pri-  
5       vatization Initiatives Projects Oversight and Account-  
6       ability Act of 2007”.

1 **SEC. 2. IMPROVED OVERSIGHT AND ACCOUNTABILITY FOR**  
 2 **MILITARY HOUSING PRIVATIZATION INITIA-**  
 3 **TIVE PROJECTS.**

4 (a) IN GENERAL.—Subchapter IV of chapter 169 of  
 5 title 10, United States Code, is amended by adding at the  
 6 end the following new section:

7 **“§ 2885. Oversight and accountability for privatiza-**  
 8 **tion projects**

9 “(a) GUARANTEED MAXIMUM PRICE CONTRACT AND  
 10 PERFORMANCE SCHEDULE.—

11 “(1) IN GENERAL.—Each military housing pri-  
 12 vatization initiative project shall be carried out  
 13 under a guaranteed maximum price contract and ac-  
 14 companied by a performance schedule.

15 “(2) TERMS.—Each contract under this sub-  
 16 section shall be reviewed by an independent third  
 17 party and certified as reasonable and consistent with  
 18 local construction prices and geographic costs of liv-  
 19 ing standards established by the Department of De-  
 20 fense.

21 “(b) OVERSIGHT AND ACCOUNTABILITY MEAS-  
 22 URES.—Each Secretary concerned shall prescribe regula-  
 23 tions to effectively oversee and manage military housing  
 24 privatization initiative projects under the Secretary’s ju-  
 25 risdiction in order to maintain project performance and

1 schedule. The regulations shall include the following re-  
2 quirements for each privatization project:

3           “(1) MONTHLY SITE VISITS.—The chief engi-  
4 neering officer at the local military installation shall  
5 conduct monthly site visits and provide reports on  
6 the progress of the privatization project. The reports  
7 shall be endorsed by the commander at such instal-  
8 lation and submitted quarterly to the chief officer  
9 for installations and environment of the respective  
10 military department and the Deputy Under Sec-  
11 retary of Defense for Installations and Environment.

12           “(2) MONTHLY MEETINGS.—The chief engi-  
13 neering officer at the local military installation, and,  
14 as applicable, the resident construction manager,  
15 privatization asset manager, bondholder representa-  
16 tive, project owner, developer, general contractor,  
17 and construction consultant for the project shall con-  
18 duct monthly meetings to ensure that the project  
19 meets performance and schedule requirements and  
20 that appropriate operating and ground lease agree-  
21 ments are in place and adhered to.

22           “(3) NOTICES OF DEFICIENCY.—If a project is  
23 90 days or more behind schedule or more than 20  
24 percent over budget, the chief officer for installa-  
25 tions and environment of the respective military de-

1       partment shall submit a notice of deficiency to the  
2       Deputy Under Secretary of Defense for Installations  
3       and Environment, the Secretary concerned, the  
4       bondholder representative, and the trustee for the  
5       project.

6           “(4) CORRECTION OF DEFICIENCIES.—

7               “(A) CURE NOTICE.—Not later than 15  
8       days after the submittal of a notice of defi-  
9       ciency under paragraph (3), the Secretary con-  
10      cerned shall submit to the project owner, devel-  
11      oper, or general contractor responsible for the  
12      project a summary of deficiencies, or cure no-  
13      tice, related to the project.

14           “(B) OFFICIAL LETTER OF NOTICE.—If  
15      the project owner, developer, or general con-  
16      tractor responsible for the project is unable,  
17      within 30 days after receiving a cure notice  
18      under subparagraph (A), to make progress on  
19      the issues outlined in such notice, the Secretary  
20      concerned shall submit to the project owner, de-  
21      veloper, or general contractor, the bondholder  
22      representative, and the trustee an official letter  
23      of notice addressing the deficiencies and detail-  
24      ing the corrective actions that should be taken  
25      to correct the deficiencies.

1                   “(C) CERTIFICATION REQUIRED TO CON-  
2                   TINUE CERTAIN PROJECTS.—If the project  
3                   owner, developer, or general contractor respon-  
4                   sible for the privatization project is unable,  
5                   within 60 days after receiving a cure notice  
6                   under subparagraph (A), to make progress on  
7                   the issues outlined in such notice, the Deputy  
8                   Under Secretary of Defense for Installations  
9                   and Environment shall certify to the congres-  
10                  sional defense committees that continuing the  
11                  project is in the best interest of the United  
12                  States or the project shall be terminated for de-  
13                  fault.

14               “(c) OPTIONS FOR COMBINING DEFICIENT  
15               PROJECTS WITH PROJECTS OF OTHER MILITARY DE-  
16               PARTMENTS.—Before terminating a ground lease or fore-  
17               closing on a military construction privatization project, the  
18               Secretary concerned, in conjunction with the Deputy  
19               Under Secretary of Defense for Installations and Environ-  
20               ment, shall examine options for combining the project with  
21               a planned project or projects for which a request for pro-  
22               posal or request for qualification is expected to be issued  
23               within 180 days by another military department.

24               “(d) AVAILABILITY OF SUFFICIENT RESERVES.—  
25               The Secretary concerned shall ensure that sufficient funds

1 are available for the completion of each military housing  
 2 privatization initiative project to provide for the timely  
 3 completion of the project in the event of default, including  
 4 to provide for the payment of subcontractors for the per-  
 5 formance of work already accomplished and necessary to  
 6 complete the project.

7 “(e) CONDITIONAL RELEASE OF PAYMENTS FOR  
 8 PROJECTS.—

9 “(1) SEQUESTRATION OF FUNDS.—Each con-  
 10 tract or agreement for a military housing privatiza-  
 11 tion initiative project shall provide for the sequestra-  
 12 tion of funds to be paid under such contract or  
 13 agreement into a separate account to be known as  
 14 the ‘project lockbox’.

15 “(2) RELEASE OF FUNDS.—Funds sequestered  
 16 under paragraph (1) shall not be paid to the project  
 17 owner, developer, or general contractor under the  
 18 project contract or agreement until the Secretary  
 19 concerned is provided a report signed by the project  
 20 owner, developer, or general contractor, the bond-  
 21 holder representative, the trustee, and construction  
 22 consultant that includes the following:

23 “(A) A detailed list of payments to be  
 24 made under the contract or agreement.

25 “(B) The amount of each such payment.

1                   “(C) The total amount of such payments  
2                   that have been made to date.

3                   “(D) A comparison between—

4                         “(i) the percentage of the total capital  
5                         sources for the project that have been ex-  
6                         pended; and

7                         “(ii) the percentage of work that has  
8                         been completed on the project.

9                   “(f) COMMUNITY MEETINGS.—

10                         “(1) IN GENERAL.—Whenever a military con-  
11                         struction privatization project is awarded, the chief  
12                         officer for installations and environment of the re-  
13                         spective military department and the commanding  
14                         officer of the local military installation shall hold a  
15                         meeting with the local community to communicate  
16                         the following information:

17                                 “(A) The nature of the project.

18                                 “(B) Any contractual arrangements.

19                                 “(C) Potential liabilities to local construc-  
20                         tion management companies and subcontractors.  
21                         tors.

22                   “(2) PUBLICATION IN FEDERAL REGISTER.—

23                   The requirement under paragraph (1) may be met  
24                   by publishing the information described in such

1 paragraph on the Federal Business Opportunities  
2 (FedBizOpps) Internet website.

3 “(g) REQUIRED QUALIFICATIONS.—The Secretary  
4 concerned shall certify that the project owner, developer,  
5 or general contractor that is selected for each military  
6 housing privatization initiative project has construction  
7 experience commensurate with that required to complete  
8 the project.

9 “(h) REQUIRED BONDING LEVELS.—

10 “(1) IN GENERAL.—Except as provided in para-  
11 graph (2), the Secretary concerned shall ensure that  
12 the project owner, developer, or general contractor  
13 responsible for a military housing privatization ini-  
14 tiative project is fully bonded for the project, includ-  
15 ing by obtaining payment and performance bonds in  
16 an amount not less than 100 percent of the max-  
17 imum price allowable under the contract or agree-  
18 ment for the overall project and each phase of the  
19 project.

20 “(2) EXCEPTIONS.—

21 “(A) WAIVER.—The Deputy Under Sec-  
22 retary of Defense for Installations and Environ-  
23 ment may waive the bonding requirement under  
24 paragraph (1) to permit a bonding level as low  
25 as 50 percent. Notice of such waiver shall be



1 submitted to the congressional defense commit-  
2 tees, including the rationale for such lower  
3 bonding level.

4 “(B) ALTERNATIVE SECURITIES.—The  
5 Secretary concerned may accept in lieu of the  
6 full bonding required under paragraph (1) an  
7 alternative type of security, including a cor-  
8 porate guarantee, if the Secretary determines  
9 that such security meets or exceeds the levels of  
10 coverage required under such paragraph. Notice  
11 of such alternative security shall be submitted  
12 to the congressional defense committees, includ-  
13 ing the rationale for accepting such alternative  
14 security.

15 “(i) CERTIFICATIONS REGRADING PREVIOUS BANK-  
16 RUPTCY DECLARATIONS.—If a military department  
17 awards a contract or agreement for a military housing pri-  
18 vatization initiative project to a project owner, developer,  
19 or general contractor that has previously declared bank-  
20 ruptcy, the Secretary concerned shall specify in the notifi-  
21 cation to Congress of the project award the extent to  
22 which the issues related to the previous bankruptcy impact  
23 the ability of the project owner, developer, or general con-  
24 tractor to complete the project.

1       “(j) COMMUNICATION REGARDING POOR PERFORM-  
2 ANCE.—The Deputy Under Secretary of Defense for In-  
3 stallations and Environment shall prescribe regulations to  
4 provide for regular and appropriate communication be-  
5 tween representatives of the military departments and  
6 bondholders for military housing privatization initiative  
7 projects to ensure timely action to address inadequate per-  
8 formance in carrying out projects.

9       “(k) REPORTING OF EFFORTS TO SELECT SUC-  
10 CESSOR IN EVENT OF DEFAULT.—In the event a military  
11 housing privatization initiative project enters into default,  
12 the chief officer for installations and environment of the  
13 respective military department shall submit a report to the  
14 congressional defense committees every 30 days detailing  
15 the status of negotiations to award the project to a new  
16 project owner, developer, or general contractor.

17       “(l) EFFECT OF UNSATISFACTORY PERFORMANCE  
18 RATING ON AFFILIATED ENTITIES.—In the event the  
19 project owner, developer, or general contractor for a mili-  
20 tary construction project receives an unsatisfactory per-  
21 formance rating due to poor performance, each parent,  
22 subsidiary, affiliate, or other controlling entity of such  
23 owner, developer, or contractor shall also receive an unsat-  
24 isfactory performance rating.

1       “(m) EFFECT OF CURE NOTICES ON CONTRACTORS  
2 AND AFFILIATED ENTITIES.—

3               “(1) IN GENERAL.—The Deputy Under Sec-  
4 retary of Defense for Installations and Environment  
5 shall keep a record of all plans of action or cure no-  
6 tices issued to a project owner, developer, or general  
7 contractor under subsection (b)(4), including the  
8 identity of each parent, subsidiary, affiliate, or other  
9 controlling entity of such owner, developer, or con-  
10 tractor.

11              “(2) CONSULTATION.—Each military depart-  
12 ment shall consult the records maintained under  
13 paragraph (1) when reviewing the past performance  
14 of owners, developers, and contractors in the bidding  
15 process for a contract or other agreement for a mili-  
16 tary housing privatization initiative project.

17              “(n) ANNUAL REPORTS.—Each Secretary concerned  
18 shall submit to the congressional defense committees an  
19 annual report outlining lessons learned from the selection,  
20 approval, and implementation of military housing privat-  
21 ization initiative projects by the respective military depart-  
22 ment.”.

- 1 (b) CLERICAL AMENDMENT.—The table of sections
- 2 at the beginning of such subchapter is amended by adding
- 3 at the end the following new item:

“2885. Oversight and accountability for privatization projects.”.

